

MAHARASHTRA POLLUTION CONTROL BOARD

☎ : 24010437/4701/24020781
24037124/5273/24044489

Fax : 24024068

Visit us on :

<http://mpcb.mah.gov.in>

No.BO/P&L Divn.I/B-3899

Kalpataru Point, 2nd 3rd & 4th Floor,
Sion Matunga Scheme Rd.No.8
Opp. Cine Planet cinema,
Near Sion Circle, Sion (E),
Mumbai - 400 022.
Date 25/6/2012

CIRCULAR

Sub : Procedure for assessment of cess as per the provisions contained in Section 6 of the Water (P&CP) Cess Act, 1977.

Ref : Personal hearing in respect of the assessment of cess to M/s.Bharat Petroleum Corpn.Ltd. for the month of August, 2011.

A personal hearing was extended to M/s.Bharat Petroleum Corpn.Ltd. in respect of the assessment of cess for the month of August, 2011. During the course of personal hearing, the present prevailing practice of the assessment of cess as per the provisions contained in Section 6 of the Water (P&CP) Cess Act, 1977 was discussed at length. It has been observed that the prevailing practice is that the monthly returns are being submitted by the Assessee to the Assessing Authority in the prescribed format, claiming the rebate and/or normal rate of assessment of cess. Such type of forms are being scrutinized by the Cess Wing on the basis of the verification reports for that particular month/s being called from the respective Regional Officer. The concerned Regional Officer on the basis of the verification report/s taken from the concerned Sub-Regional Officer, also recommends the assessment of cess at normal rate / higher rate with or without rebate.

Section-6 of the Water (P&CP) Cess Act, 1977 provides that the amount of cess shall be calculated on the basis of water consumed by any person or local Authority, as the case may be, for any of the purposes specified in Column-(1) of Schedule-II at such rate, not exceeding the rates specified in Corresponding Entry in Column (2) i.e. at normal rate.

In case, any industry or local Authority not complying with the following conditions, then, the amount of cess shall be calculated and payable at such rate, not exceeding the rates specified in Column-3 of Schedule-II i.e. at higher rate. If, it fails to comply with :-

- any of the provisions of Section 25 of the Water (P&CP) Act, 1974; or
- any of the standards laid down under the provisions of the Environment (Protection) Act, 1986.

Section 7 of the Water (P&CP) Cess Act, 1977 makes provision in respect of grant of rebate. It provides that such person or local Authority will not be entitled to a rebate of 25% of the cess payable by such person or as the case may be, local Authority if it complies with the following conditions :-

- consumes water in excess of the maximum quantity as may be prescribed in this behalf for any industry or local Authority; or
- fails to comply with any of the provisions of Section 25 of the Water (P&CP) Act, 1974; or
- fails to comply with any of the standards laid down by the Central Govt. under the provisions of the Environment (Protection) Act, 1986.

25/6/12

web site
19/7

At present, though some of the industries (Assessee) complying with the consent conditions (Standards) and Environmental Standards, thereby, entitled for normal rate, not a single industry is so far eligible for the rebate, on account of non-complying with all above 3 conditions prescribed for rebate.

The issue regarding monthly assessment of cess in respect of the industries/ local bodies claiming rebate and/or normal rate was discussed at length during the course of above hearing. It was decided that most of the industries on account of non-complying with one of the conditions prescribed for normal rate or rebate are not claiming not only rebate but also the normal rate. Therefore, at present the personal hearing followed by issuance of show cause notices, if any issued on the basis of non-compliances, only in the matter of the returns were specific normal rate/rebate have been insisted or claimed. In other cases, where, the rebate or normal rates have not been claimed, the assessment is done at higher rate only.

However, it has been observed that where the normal rate and /or rebate have been claimed, it becomes necessary to call further verification report from the respective Regional Officers. Such reports are being received after lapse of time and thereby, the personal hearings for different months are being separately conducted, so as to extend an opportunity of hearing before assessment of cess at the higher rate without rebate. It is noticed that this practice has been resulted in delay for issuance of assessment order for each month. This unnecessary increase the paper work, loss of revenue/delayed payment of cess etc. and a lot of time being spent in conducting separate hearings.

Therefore, it was decided to take review of existing practice of assessment of cess at higher rate without rebate with personal hearing for each month, which unnecessary consumes a lot of time, unless the concerned defaulting industry insist for personal hearing. It was decided to simplify the procedure for assessment and also to ensure the compliance of principles of natural justice. After due deliberation, it has been decided as under :

1. The returns submitted by the industries / local bodies without claiming normal rate with or without rebate may be assessed at the higher rate on the basis of available record without extending personal hearing.
2. The returns submitted by the industries/ local bodies claiming normal rate with or without rebate for each month shall be decided on the basis of issuance of show cause notice after receipt of the non-compliance/s and the replies if any received to the show cause notice or non-receipt thereof, by passing speaking order, mentioning specific non-compliances therein, unless an opportunity of hearing has been asked for by the concerned defaulting industries/local bodies, by following the principles of natural justice.

It has been observed that the Board has granted Consent/s and Authorizations to 75,080 industries as on March, 2011 as per Statistical Report of MPCB 2010-2011 and the MPC Board has covered 8977 Industries and 242 local bodies only for the assessment of cess, as per record available with the Cess Wing as on 31/03/2012. As per S.O. No.499(E), dtd.6/5/2003 issued by the Ministry of Environment & Forests, Govt. of India, all the industries, consuming water more than 10 Kilo Liter/ per day and all the industries generating hazardous wastes as defined under the Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008 are covered for the levy of cess. Therefore, there is necessity to find out the exact difference of the consented industry not covered for the assessment of cess at the Regional level.

It is specifically noted that at the Regional and Sub-Regional level, no follow up is being taken in respect of the assessment of cess or non-submission of the returns by the industries and the local bodies, which are covered under the

provisions of the Water (P&CP) Cess Act, 1977. Though, the consent/s granted to various industries and local bodies, specifically impose the conditions about the assessment of cess, the consents are being renewed / granted without confirming the submission of returns and payment of cess as per the assessment orders. Every consent impose specific condition that, the applicant shall comply with the provisions of the Water (P&CP) Cess Act, 1977, but no Regional Officer/Sub-Regional Officer ensure the compliance of this particular important condition, thereby, the revenue of the Board / Central Government is being affected.

Therefore, all the Regional Officers and Sub-Regional Officers as well as the Heads of the Departments of MPCB, who are processing the applications for consent/s at different levels, should take appropriate steps to offer specific remarks in respect of the submission of the returns and payment of cess with the arrears of cess amount not deposited by that particular industry, with specific bold remarks about not to consider grant of consent/ renewal till the compliance under the provisions of the Water (P&CP) Cess Act, 1977 is secured. The Field Officers visiting the industries should be informed to offer specific remarks in respect of the compliance of the cess to sensitize the concerned industry / local body, to make payment of cess within stipulated time. Where such payment is not made, in appropriate cases, the proceedings of recovery as a land arrears can be initiated including recommending case for refusal of consent. The Regional/Sub-Regional Officers as well as HoDs should regularly send the grant of Consent/s and Authorisations at their level to the Cess Wing for further necessary action.


Milind Mhaiskar
Member Secretary

Copy submitted to: Hon'ble Chairman, MPCB, Mumbai – for favour of information.

Copy to:

1. The Joint Director (Water Pollution Control)/Joint Director(Air Pollution Control)/Principal Scientific Officer/ Sr.Law Officer(P&L Divn.)/ Chief Accounts Officer/Asstt.Secretary(Technical)/Joint Director(PAMS)/Regional Officer(HQ)/ Sr.Administrative Officer, MPCB, Mumbai – for information and necessary action.
2. I/c Law Officer(P&L Divn.)/Accounts Officer(Establishment/Cess), MPCB, Mumbai – for information and necessary action.
3. Regional Officer- Mumbai/Navi Mumbai/ Thane/Kalyan/Raigad/Pune/ Aurangabad/ Nagpur/Nashik/Kolhapur/ Amravati/ Chandrapur, MPCB – for information and necessary action.
4. Incharge-Central Lab., Navi Mumbai – for information and necessary action.
5. Incharge, Regional Lab., Pune/Nagpur/Aurangabad/Thane/Chiplun/Nashik – for information and necessary action.
6. SRO-Cess/Mumbai-I/Mumbai-II/Mumbai-III/Thane-I/Thane-II/Tarapur-1/Tarapur-III/ Navi Mumbai-I/Navi Mumbai-II/Taloja/Kalyan-I/Kalyan-II/Kalyan-III/ Raigad-I/ Raigad-II/ Raigad-III/Mahad/Kolhapur/ Sangli/Ratnagiri/ Chiplune/Pune-I/Pune-II/Pimpri-Chinchwad/ Satara/ Solapur/Aurangabad-I/ Aurangabad-II/ Aurangabad-III/Nanded/Nashik/ Ahmednagar/ Jalgaon-I/ Jalgaon-II/Nagpur-I/Nagpur-II/Nagpur-III/Chandrapur/Amravati-I/ Amravati-III/ Akola/ Parbhani/ Latur/Bhandara, MPCB – for information and necessary action.
7. All Asstt.Law Officers, Policy & Law Divn, MPCB, Mumbai- for information & necessary action.
8. Asstt.System Officer, MPCB, Mumbai- for information and necessary action – He is instructed to place the said circular on the website of the Board.